

FCC MAIL SECTION

Before the  
Federal Communications Commission  
Washington, D.C. 20554

JUL 6 4 11 PM '94

DISPATCHED BY MM Docket No. 94-70 ✓

In the Matter of

Amendment of Section 73.202(b)  
Table of Allotments,  
FM Broadcast Stations.  
(Moncks Corner and Kiawah Island,  
South Carolina)

RM-8474

## NOTICE OF PROPOSED RULE MAKING

Adopted: June 21, 1994;

Released: July 5, 1994

Comment Date: August 26, 1994

Reply Comment Date: September 12, 1994

By the Acting Chief, Allocations Branch:

1. The Commission has before it the petition for rule making filed by Ceder Carolina Limited Partnership ("petitioner"), permittee of Station WJYQ(FM), Channel 287C3, Moncks Corner, South Carolina, proposing the substitution of Channel 288C2 for Channel 287C3 and the reallocation of Channel 288C2 from Moncks Corner to Kiawah Island, South Carolina, and the modification of Station WJYQ(FM)'s construction permit accordingly. Petitioner states its intention to apply for Channel 288C2 at Kiawah Island, if allotted.

2. Petitioner seeks to invoke the provisions of Section 1.420(i) of the Commission's Rules, which permit the modification of a station's license to specify a new community of license without affording other interested parties an opportunity to file competing expressions of interest. See *Modification of FM and TV Authorizations to Specify a New Community of License*, 4 FCC Rcd 4870 (1989), *recon. granted in part*, 5 FCC Rcd 7094 (1990). In this regard, petitioner advises that the requested reallocation to Kiawah Island is mutually exclusive with the present allotment of Channel 287C3 at Moncks Corner. In support of its proposal, petitioner states that the reallocation of Channel 288C2 from Moncks Corner (population 5,607)<sup>1</sup> to Kiawah Island (population 718), South Carolina, would provide Kiawah Island with its first local aural transmission service and would not deprive Moncks Corner of its sole local aural transmission service.<sup>2</sup> Although petitioner recognizes that there may be some theoretical loss to the northern

part of Moncks Corner and areas in northern Berkeley County, South Carolina, the reallocation will enable Station WJYQ(FM) to provide better than 1.0 mV/m coverage of Moncks Corner and city grade coverage over all of Kiawah Island. Further, petitioner notes that neither Moncks Corner nor Kiawah Island is located in the adjacent Charleston Urbanized Area. Therefore, since Station WJYQ(FM) would provide service to the Urbanized Area if located in Moncks Corner or Kiawah Island, petitioner argues that the reallocation should not be considered as a move into an Urbanized Area since the station presently serves the Charleston Urbanized Area and would continue to do so. Petitioner also states that the reallocation would allow Station WJYQ(FM) to provide service to 468,867 persons as compared to the present Class A service to 226,341 persons. Petitioner asserts that the reallocation would provide additional service to 250,238 persons, and that while 7,712 persons would lose service from Station WJYQ(FM), those persons in the loss area would continue to receive reception service from seven other FM stations. We note, however, that petitioner does not describe the number of reception services that currently serve the gain area or whether the gain area will include any underserved areas. Petitioner is requested to address these issues in its comments.

3. We believe the public interest would be served by proposing the substitution of Channel 288C2 for Channel 287C3 and the reallocation of Channel 288C2 from Moncks Corner to Kiawah Island, South Carolina, since it could provide Kiawah Island with its first local aural transmission service and enable Station WJYQ(FM) to expand its service area. An engineering analysis has determined that Channel 288C2 can be allotted to Kiawah Island in compliance with the Commission's minimum distance separation requirements with a site restriction of 13 kilometers (8.1 miles) north at petitioner's requested site.<sup>3</sup>

4. Accordingly, we seek comments on the proposed amendment of the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, for the communities listed below, to read as follows:

City	Channel No.	
	Present	Proposed
Moncks Corner, South Carolina	287C3	--
Kiawah Island, South Carolina	--	288C2

5. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

<sup>1</sup> Population figures taken from the 1990 U.S. Census.

<sup>2</sup> Moncks Corner is served by Station WMCJ(AM)

<sup>3</sup> The coordinates for Channel 288C2 at Kiawah Island are North Latitude 32-43-38 and West Longitude 80-00-05. We note that the proposed coordinates for Channel 288C2 at Kiawah Island are short-spaced to the construction permit site for Station WONO(FM), Channel 287A, Walterboro, South Carolina.

However, the construction permit for Station WONO(FM) was modified to specify operation on Channel 229A in the context of MM Docket No. 91-127. See 7 FCC Rcd 6522 (1992). On October 13, 1993, a license (File No. BLH-930303KE) was granted to Station WONO(FM) specifying operation on Channel 229A at Walterboro.

6. Interested parties may file comments on or before **August 26, 1994**, and reply comments on or before **September 12, 1994**, and are advised to read the Appendix for the proper procedures. Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554. Additionally, a copy of such comments should be served on the petitioner, or its counsel or consultant, as follows:

Nancy C. Ory  
Leventhal, Senter & Lerman  
2000 K Street, N.W., Suite 600  
Washington, D.C. 20006  
(Counsel for Petitioner)

7. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. *See Certification That Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

8. For further information concerning this proceeding, contact Sharon P. McDonald, Mass Media Bureau, (202) 634-6530. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

#### FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos  
Acting Chief, Allocations Branch  
Policy and Rules Division  
Mass Media Bureau

#### APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND

the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See Section 1.420(a), (b) and (c) of the Commission's Rules.) Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554.

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street N.W., Washington, D.C.